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Testimony of Christopher Drew
CT Bar Association
Estates & Probate Section

In SUPPORT of SB142

***AN ACT CONCERNING REVISIONS TO THE CONNECTICUT UNIFORM POWER OF
ATTORNEY ACT AND ADOPTION OF THE CONNECTICUT UNIFORM RECOGNITION OF
SUBSTITUTE DECISION-MAKING DOCUMENTS ACT.***

Judiciary Committee
February 24, 2016

My name is Christopher S. Drew. I am a Shareholder of Drew & Mersereau, P.C., a law firm with an office in Avon, and the Vice-Chair of the Connecticut Bar Association's Estates & Probate Section. On behalf of the Connecticut Bar Association, I respectfully request that the Judiciary Committee act favorably on Senate Bill 142.

I'd like to address the amended language from the 2015 Connecticut Uniform Power of Attorney Act contained in Sections 1-8 of SB 142:

Sections 1-8 of this bill are essentially clean-up amendments to the Connecticut Uniform Power of Attorney Act (UPOAA) law that was passed by the Legislature last session, Public Act 15-240.

The UPOAA was enacted in July 2015 with an *effective date* a year later on July 1, 2016 (about 4 months from now). The idea was to allow all interested parties to have several months to understand the changes and to identify any needed fixes for this current session, before the law officially goes into effect on July 1, 2016.

Sections 1-8 of this bill include the fixes that have been identified by members of the Connecticut Bar Association, and we respectfully request the Judiciary Committee to support these proposed fixes:

Section 1 provides technical fixes to dates, to be July 1, 2016, which is the effective date of the UPOAA.

Section 2 provides fixes to the text of the UPOAA relating to the disposition of a deceased person's remains.

Section 3 provides technical fixes to the text of the sample Power of Attorney form that may be used by citizens and attorneys.

Section 4 provides technical fixes to dates, to be July 1, 2016, which is the effective date of the UPOAA.



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Section 5 provides fixes to the text of the UPOAA relating to the disposition of a deceased person's remains.

Section 6 provides a fix to a statutory reference and to the revision date for the old statute.

Section 7 provides fixes to the text of the UPOAA relating to the disposition of a deceased person's remains *[We respectfully suggest that in line 197 of the bill the parenthetical "(1)" may need to be changed to "(10)"]*.

Section 8 fixes the text of the UPOAA regarding the timing of when a probate court may order the reinstatement of any authority of any agent under a power of attorney that was previously limited or suspended by the probate court because of the existence of a conservatorship.

**CT Uniform Recognition of Substitute Decision-Making Documents Act
is contained in Sections 9-18 of SB 142:**

This proposal provides legal guidelines that would allow a "substitute decision-making document" executed outside of Connecticut to be recognized and accepted in Connecticut. This same proposal was heard by the Judiciary committee last session (2015 HB 6928). We respectfully request the passage of this proposal in 2016.

Powers of Attorney are called by different names in different geographical areas. In New York they are often called "proxies" and in parts of Canada they are known as "representation agreements." In Sections 9-18 of SB 142 we use the term "substitute decision-making documents" to refer to what we call powers of attorney and health care documents in Connecticut. By any name they are very useful tools to create a simple agency relationship for all kinds of reasons. Most commonly, they are used to appoint an agent for financial transactions or for health care decisions. However, their usefulness is very limited if they cannot be used in Connecticut when people move to Connecticut and need them here.

The proposal will allow powers of attorney drafted in any state or in a Province of Canada to be accepted in Connecticut or any other state or Province that adopts it. The Act, for the very first time in history was drafted in conjunction with the Uniform a Law Conference of Canada to promote the cross border acceptance of these important agreements.

Our proposal uses 5 simple rules to promote portability:

1. A document appointing an agent for financial transactions or for health care decisions will be deemed valid in Connecticut if it was executed in compliance with the laws of that jurisdiction where it was executed or those laws of a different state if chosen by the person creating the document.



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2. The meaning and effect of a document appointing an agent for financial transactions or for health care decisions and the authority of the decision-maker are determined by the laws of the jurisdiction identified in number one above. Accordingly, the agent's authority does not vary according to geography but remains constant in accordance with the maker's presumed intent.
3. A person asked to accept a document appointing an agent for financial transactions or for health care decisions from another state or province without actual knowledge of the fact that the document is void, invalid or terminated for any reason, may assume without further inquiry that the document is valid and is not liable for damages if it turns out otherwise. This is to encourage the acceptance of documents appointing an agent for financial transactions or for health care decisions even when they are not from Connecticut.
4. A person asked to accept a document appointing an agent for financial transactions or for health care decisions from another state or province may request and rely upon an agent's certification of any relevant fact, a translation of the document if it is not in English and/or an opinion of counsel that the document is valid under the law of such other state or province. The agent must do this at the expense of the agent.
5. If the requested documentation is presented by the agent, the person being asked to accept it must do so if unless one of five very narrow exceptions apply.

The proposal will provide for the wider acceptance of documents appointing an agent for financial transactions or for health care decisions that were not signed in Connecticut. It was drafted to work in conjunction with our recently-enacted Uniform Power of Attorney Act (Public Act 15-240) and does not replace any substantive provisions of existing state law. It will protect Connecticut banks, hospitals, doctors and any other person asked to accept document appointing an agent for financial transactions or for health care decisions signed outside of Connecticut.

I ask for your support to advance this important legislation and I look forward to answering any questions from the committee.

CONTACT

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